

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

IN RE:

**CHARLES E. WALKER,
DEBTOR**

CASE NO.: 3:16-BK-03304

CHAPTER 11

JUDGE MASHBURN

**DEBRA A. IRVIN,
PLAINTIFF,**

Adv. Proc. No. 3:19-ap-90103

v.

**GREEN WISE HOMES, LLC,
CHARLES E. WALKER, JON PAUL
JOHNSON, JULIE COONE, JAMES
BRETT, and NATIONWIDE
INVESTMENTS LLC,
DEFENDANTS.**

**DEFENDANT NATIONWIDE INVESTMENTS LLC'S MOTION TO
DISMISS PURSUANT TO RULE 7012 OF THE FEDERAL BANKRUPTCY
RULES AND RULE 12(B)(6) OF THE FEDERAL RULES OF CIVIL
PROCEDURE**

* * * * *

COMES NOW, Nationwide Investments, LLC, Defendant, by and through counsel, and moves this Court, pursuant to Federal Bankruptcy Rule 7012 and the Federal Rules of Civil Procedure, Rule 12(B)(6), to Dismiss the Defendant from the above caption case for failure to state a claim for which relief can be granted for the following reasons:

1. The Complaint filed seeks relief against the Defendant in the amount of \$825,000, a prejudgment attachment, attorney fees, and other remedies not listed that may be “equitable and proper.”

2. The Complaint fails to state a single cause of action against the Defendant. The Plaintiff lists the following in the Complaint: Count 1: Fraud; Count II: Liability Pursuant to Tennessee Code § 66-22-113; Count III: Unjust Enrichment; Count IV: Civil Conspiracy; Count V: Fraudulent Transfer of Assets. However, the Complaint is devoid of any allegations against the Defendant that would entitle the Plaintiff to any recovery against the Defendant.

3. Despite the Complaint’s facial deficiencies, any potential claim or claim is barred by the Statute of Limitations in Tennessee Code Annotated § 28-3-105 which would have expired, at the latest, on November 24, 2017. Exhibit 5 to Plaintiff’s Complaint is the Deed to 1125 Sunnymeade Drive, Nashville, TN, 37216, which was recorded on November 24, 2014, in the Davidson County Register of Deeds. Notice is given to all the world when the instrument is recorded in the Register of Deeds Office. *Haiser v. McClung*, No. E2017-00741-COA-R3-CV, 2018 Tenn. App. LEXIS 509, at *21 (Ct. App. Aug. 29, 2018).

4. A motion to dismiss for failure to state a claim may properly raise the expiration of the statute of limitations. *Davis v. Grange Mut. Cas. Grp.*, No. M2016-02239-COA-R3-CV, 2017 Tenn. App. LEXIS 646, at *5 (Ct. App. Sep. 28, 2017); “A defendant may raise a statute of limitations defense in the context of a Rule 12(b)(6) motion to dismiss.” *Reid v. Baker*, 499 F. App’x 520, 524 (6th Cir. 2012).

5. Nationwide Investments does consent to the entry of final orders or judgment by the bankruptcy court.

Date: May 14, 2019

Respectfully submitted,

s/Charles E. Walker -
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CERTIFICATE OF SERVICE:

I hereby certify that on May 14, 2019, I served the following parties by U.S.

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